

OWCP subsequently received CA-17 form reports dated August 27 and September 3 and 17, 2020 diagnosing low back muscle sprain/pain/low back pain, and narrative reports dated

August 27 and September 3, 2020 diagnosing acute midline low back pain without sciatica and acute left-side low back pain without sciatica from Dr. Manoj Garg, an osteopath Board-certified in family practice. In August 27, 2020 x-ray report, Dr. Christina Pinto, an osteopath Board-certified in family medicine, diagnosed mild multilevel degenerative disc disease most pronounced in the lower thoracic and lower lumbar spine. OWCP also received an August 27, 2020 report from Dr. Mark Mulak, a chiropractor, who diagnosed lower back and thorax muscle and tendon strains and thoracic and lumbar segmental and somatic dysfunction, which he attributed to the claimed August 18, 2020 employment incident.

By decision dated October 2, 2020, OWCP denied the claim, finding that appellant failed to submit any medical evidence diagnosing a medical condition in connection with the accepted August 24, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Subsequent to the denial of her claim, OWCP received an October 1, 2020 Form CA-17 from Dr. Garg diagnosing low back and right shoulder strain, and an October 22, 2020 Form CA-17 which diagnosed lumbar strain from Barbara Burchard, an advanced practice registered nurse.

On October 23 and November 2, 2020 appellant requested reconsideration. She submitted a November 4, 2020 report and referral by Ms. Burchard.

By decision dated January 28, 2021, OWCP denied modification. It found that the medical evidence of record did not include a valid diagnosis from a qualified physician under FECA.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

OWCP denied appellant's claim finding that the medical evidence of record did not establish a diagnosed medical condition. It however failed to review the August 20, 2020 Part B attending physician's report and August 20, 2020 Form CA-17 report from Dr. Ruggiero. In the case of *William A. Couch*,¹ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.² Because OWCP did not review and address the August 20, 2020 medical evidence from Dr. Ruggiero, the Board cannot review such evidence for the first time on appeal.³ The case will therefore be remanded to OWCP to enable a proper consideration of the evidence that was of record at the time

¹ 41 ECAB 548 (1990).

² *Id.*; see also *E.P.*, Docket No. 20-0655 (issued March 17, 2021); *J.S.*, Docket No. 18-1111 (issued April 30, 2020); *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004).

³ 20 C.F.R. § 501.2(c). *A.C.*, Docket No. 20-0917 (issued January 27, 2021); *E.P.*, *id.*

of its January 28, 2021 decision to be followed by an *de novo* decision regarding appellant's request for reconsideration. Accordingly,

IT IS HEREBY ORDERED THAT the January 28, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 15, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board